IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.551 OF 2006
ALONG WITH
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Mr. Pankaj Bhausaheb Patil ....Applicant
(Original accused No.5)

V/s

The State of Maharashtra
At the instance of Medha
Police Station, Medha,
District: Satara. ....Respondents.

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Shri Shirish Gupte, Sr. Advocate with Shri Dilip Bodake for the applicant.

Shri Rajiv Patil with Shri H.S. Venegaonkar, advocate for the original complainants.

Ms. Rajeshree Gadhvi, APP for the State.

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ALONG WITH
CRIMINAL APPLICATION NO. 556 OF 2006
ALONG WITH
CRIMINAL APPLICATION NO. 557 OF 2006
ALONG WITH
CRIMINAL APPLICATION NO. 558 OF 2006
ALONG WITH
CRIMINAL APPLICATION NO. 559 OF 2006
ALONG WITH
CRIMINAL APPLICATION NO. 560 OF 2006

Mr. Jagannath Eknath Jaykar
& Anr. ...Applicants.
(Orig accused Nos. 3 & 4)

V/s

The State of Maharashtra
at the instance of Medha
Police Station, Medha,
District: Satara. ....Respondents.

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Shri P.K. Dhakephalkar, advocate with Shri A.J. Kenjale, advocate for the applicants.

Shri Ajay Gadkari advocate for the original complainants.

Ms. Rajeshree Gadhvi, APP for the State.

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CORAM: V.M. KANADE, J.
DATE: 27th February, 2006

P.C.:

1. Since the facts involved in all these applications are similar, they are being disposed of by this common order.

2. Heard the learned Counsel for the applicants, the learned Counsel for the complainants and the learned APP for the State.

3. The applicants are seeking an order of anticipatory bail since they have an apprehension that they are likely to be arrested by the Police in respect of the complaint which is filed against them by the members of sugar factory for the offence punishable under section 420, 467, 468 etc of the Indian Penal Code.

4. These applications are filed by the Managing

Director, Deputy Chief Accountant and the Cane Development Officer of Kisanveer Sahakari Sakhar Karkhana (hereinafter referred to as "the Karkhana"). It is the case of these applicants that the complainants belonged to the rival group and they were defeated by the present managing committee members in the election and, therefore, they bore a grudge against the present managing committee members and the applicants herein.

5. The case of the applicants is that for the past 2/3 years the economic condition of the members of the said Karkhana had deteriorated on account of the famine which had given poor yields to the sugar cane crop. Therefore, a decision was taken to take loan from the Bank for the benefit of the members so that the crop seeds and fertilizers could be given to the individual members and the repayment of the loan was to be guaranteed by the Karkhana. According to the applicants, the object behind the said scheme was to give crop seeds to the members who could then produce sugar-cane in the area of operation of the Karkhana which would curtail the expenditure for importing sugar-cane from other areas and this would, in turn, reduce the transportation cost and other cost. Accordingly, there was a negotiation made with the

Bank of Maharashtra who agreed to give loan to the members of the Karkhana. One of the conditions which was imposed was that the Branch Manager would verify the identity of each member and this was to be further certified by the employees of the Karkhana. Accordingly, loan amount was paid to the Karkhana which, in turn, gave the plants, seeds and other material to the individual members.

6. Thereafter, 44 members filed a complaint in the Court of Judicial Magistrate, First Class, Medha, District - Satara in which it was alleged that they had never applied for a loan from the Bank of Maharashtra and that their signatures on the loan proposal were forged. The grievance was, therefore, made in the complaint that the applicants had committed an offence of cheating, misappropriation and forgery. The learned Magistrate directed the Police to investigate the matter under section 202 of the Criminal Procedure Code after recording the verification statement of the complainants. It was stated in the complaint that, initially, they had approached the local police station. However, the complaint was not recorded and, therefore, they were compelled to file a complaint before the J.M.F.C. After the said order was passed, the applicants filed

applications for anticipatory bail before the Sessions Court, Satara. In the said applications, it was alleged that the Investigating Officer had threatened that he would arrest the applicants. Initially, an ad-interim order was granted. However, the Sessions Court rejected the applications for an anticipatory bail. Thereafter, the present applications have been filed in this Court.

7. Shri Shirish Gupte, the learned Senior Counsel appearing for the applicant in Criminal Application Nos. 551/2006 to 555/2006 submitted that the police did not have power to arrest the applicants when the matter was entirely in the domain of the Magistrate and, at the highest, the Investigating Officer could submit his report to the Magistrate who would then decide whether process should be issued on the basis of the report or on the material available before him or may reject the complaint. Therefore, the Investigating Officer had no right to threaten the applicants that he would arrest them. In support of the said submission he relied upon the judgment of the Supreme Court in the case of Mohd. Yousuf Vs. Smt. Afaq Jahan & Anr reported in **2006(1) Supreme 6.** Shri Gupte, the learned Senior Counsel further submitted that, even otherwise, the custodial interrogation of

the applicants was not necessary and all the documents were already seized by the police pursuant to the search warrant which was issued by the Magistrate and, therefore, all the documents being with the Investigating Officer, there was no necessity of custodial interrogation. He further submitted that neither the complainant nor the Bank had suffered any loss as the entire amount had been utilised for the purchase of seeds and fertilizers and, admittedly, each member had received those seeds and other equipments and none of the complainants had made any grievance that he had not received the seeds. He has further submitted that the Bank also had been repaid the entire loan which was taken by the Karkhana for the benefit of its more that 200 members and a certificate was issued by the Bank that there was no amount which was due and outstanding on the part of the Karkhana or any of its members. He submitted that the complaint had been filed on account of political rivalry and an attempt was made to falsely implicate the the present managing committee members by those managing committee members who were political rivals of the present managing committee members and who were defeated in earlier elections.

8. Shri P.K. Dhakephalkar, the learned Counsel

appearing on behalf of the Managing Director and the Deputy Chief Accountant of the Karkhana in Criminal Application Nos. 556 to 2006 to 560 of 2006, submitted that the complainants had no right to raise any grievance as the Bank had informed the complainants that the Karkhana alone was responsible for the repayment of the loan amount which was paid for the purchase of sugar-cane seeds and fertilizers and that none of their properties was liable to be confiscated or seized. The learned Counsel submitted that the Bank also had made it clear that no amount was due and payable from any of the members. He submitted that in view of the unequivocal admission given by the Bak, there was no person who was aggrieved by the said transaction and this itself indicated that the complaints were filed merely to harass the present applicants and to settle the political score by filing false and frivolous criminal complaints.

9. Shri Rajiv Patil the learned Counsel appearing on behalf of the original complainants in Criminal Application Nos.551/2006 to 555/2006 sought permission to make submissions on behalf of the complainants. He submitted that, in this case, a fraud had been perpetuated on the farmers and the question was not

whether any amount was due and payable by the complainant to the Bank but the question was whether the Karkhana had an authority to make false representation on behalf of its members or on behalf of the persons who were either dead or not in existence. He submitted that, therefore, merely because the entire amount was paid by the Karkhana, the accused thereby were not exonerated or absolved from their liability in respect of the offence which was already committed by them. He submitted that even though the order was passed by the Magistrate under section 202, the powers of the Investigating Officer to arrest the accused were not taken away. He invited my attention to section 2(h) of the Code of Criminal Procedure wherein the word "investigation" has been defined. He submitted that on conjoint reading of the provisions of Chapter XII and XV, it was clear that the Investigating Officer retains the power to arrest. He tried to distinguish the judgment on which the reliance was placed by the learned Counsel for the applicants in the case of Mohd. Yousuf (supra). He submitted that in the said case, the question before the Supreme Court was whether the police had right to register a case after directions were given by the Magistrate to investigate into the offence under section 156(3). He also relied upon the judgment of

this Court in the case of Sim Sim Trading Company, Mumbai Vs. Cream Creation, Mumbai and another reported in **1999(2) Mh.L.J. page 184.** The learned Single Judge (Coram: D.G. Deshpande, J.) had held that even where the Magistrate gives direction to the police to investigate and send a report under section 202, the power of the police to carry out the search and seizure is not taken away.

10. Shri Ajay Gadkari, appearing for the original complainants in Criminal Application Nos.556/2006 to 560/2006 submitted that certain employees had given statements which clearly indicated that the applications of the members were fabricated and that the present applicants were involved in the said fraud. He also submitted that the Resolution which was initially passed by the Managing Committee had been tampered with and though, initially, it was resolved to take loan from the Bank of India, subsequently that name was altered and the name of the Bank of Maharashtra was mentioned in the place of Bank of India. He submitted that, therefore, custodial interrogation was essential. He also invited my attention to the subsequent signatures of the complainants in the Bank records and the signatures which are obtained on the proposal. He submitted that

even a bare perusal of the said signatures was sufficient to indicate that the complainants' signatures had been forged. He submitted that, therefore, the applications were liable to be dismissed.

11. I have given my anxious consideration to the submissions made by the learned Counsel appearing on behalf of the rival parties. In my view, the Supreme Court in the case of Mohd. Yousuf (supra) has clearly observed that in cases where the Magistrate orders investigation before taking cognizance under section 156(3) of the Criminal Procedure Code, the police had right to register FIR and investigate into the matter and submit its report. The Supreme Court further held that in cases where investigation was ordered after cognizance was taken and the direction was given to submit a report under section 202 of the Criminal Procedure Code, in such cases, the matter remains in the domain of the Magistrate. The Supreme Court in its judgment in the case of Mohd. Yousuf (supra) in paras 9, 10 and 11 has observed as under:-

> "9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes

cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e.

> "or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding"." (Emphasis supplied)

"10. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him." (Emphasis supplied)

"11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognisance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

12. A perusal of the aforesaid observations clearly establishes that once the cognizance is taken by the Magistrate and direction is given to investigate to the Investigating Officer then, in that case, the duty of the Police Officer is to submit a report to the Magistrate who then takes a decision whether process should be issued against the accused or not. In the present case, it is an admitted position that, initially, police had not taken any cognizance of the complaints and, therefore, the complainants had approached the learned Magistrate who, after taking cognizance, passed an order of investigation under section 202 and pursuant to the said orders which were passed, a search warrant was issued and the police had taken search and seizure of all the documents. The contention of the learned Counsel appearing on behalf of the complainants, therefore, cannot be accepted that even in cases where the investigation is ordered under section 202, a right of the police to arrest is not taken away. When a query was made by this Court whether there was any judgment of this Court or the Supreme Court or any other High Courts in support of the said contention, the learned Counsel for the complainants was unable to refer to any judgment of the Supreme Court or this Court or any other High Courts. There cannot be any two opinions regarding

the view taken by the learned Single Judge of this Court in the case of Sim Sim Trading Company (supra) because there cannot be any doubt that during the course of investigation ordered by the Magistrate under section 202, the police can take search and seizure after obtaining relevant order under section 91 or 94 of the Criminal Procedure from the Magistrate which has been done in the present case. Since the matter is now in the domain of the Magistrate, as long as the Magistrate does not take any decision either under section 204 or under section 303, the police cannot now meddle with the powers of the Magistrate under sections 202, 203 and 204 of the Criminal Procedure Code. Further, it is an admitted position that the present Managing Committee had defeated the earlier Managing Committee and there is political rivalry between the two parties. No fault also can be found with the scheme of the Karkhana of supplying seeds and fertilizers to its members who had suffered losses on account of famine and who were unable to purchase seeds and fertilizers on their own and needed assistance from the Karkhana and if the members of the Karkhana on account of their losses which were suffered in the earlier years were not given the assistance by the Karkhana, the net result would have been that the Karkhana would have been compelled to

purchase sugar-cane from outside which would have put an additional burden of expenditure on transportation and other ancillary cost on the Karkhana. Further, it is an admitted position that the entire amount had already been repaid to the Bank which is evident from the certificate which is issued by the Bank. The documents also are with the Investigating Officer on the basis of which a report can be submitted to the Magistrate.

13. Thus, in my view, the applicants have made out a case for grant of an anticipatory bail till such time as the final decision is taken by the Magistrate on the basis of the report filed by the Investigating Officer or on the basis of the material which is available with the learned Magistrate. Thereafter, if the Magistrate chooses to issue process, the applicants would then be at liberty to approach the Sessions Court for an anticipatory bail. In my view, the Sessions Court has clearly erred in rejecting the applications of the applicants on the say filed by the Investigating Officer. The order of the Sessions Court is, therefore, liable to be set aside.

14. In the result, the following order is passed:-

O R D E R

. The applicants not to be arrested in connection with the complaints which are filed against them pertaining to the loan transactions which are executed by the members of the Karkhana till further orders are passed by the J.M.F.C. Medha, District - Satara.

. If process is issued by the Magistrate then interim protection granted by this Court to continue for a period of seven days. The order passed by the Sessions Court is set aside. The applicants shall thereafter move the Sessions Court and, for that purpose, a period of 7 days is given to the applicants. The Sessions Court to decide the applications under section 438 of Cr.P.C. and shall not be influenced by any observations which are made by this Court in this order or the observations made by its predecessor in the earlier order which has been set aside.

. Applications are accordingly disposed of.

V.M. KANADE, J.